IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX APPLICATION NO.5 OF 2003

The State of Maharashtra through the
Additional Commissioner of Sales Tax ..Applicant.

V/s.

M/s.Tata Engineering Locomotive Co.Ltd. ..Respondent.

Mrs.Madhubala Kajale for applicant.

Mr.Satish Shah with H.N. Vakil i/b. M/s. Mulla & Mulla & C. B. & C. for respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 14TH JULY, 2006.

P.C.:

Heard counsel for rival parties. The question sought to be raised in this application is,

"Whether the sale of 97 vehicles by the respondent dealer to the Government of India under five invoices were affected in the course of export covered by section 5(1) of the Central Sales Tax Act, 1956 ? "

2. The learned counsel appearing for Revenue contends that the said transaction cannot be said to be within the sweep of the provisions of section 5(1) of the C.S.T. Act. Reliance is placed on the Division

Bench Judgments of this Court in the case of **Usha Martin Black Ltd. V/s. State of Masharashtra**, **1996 (101) S.T.C. 389** and **Narang Hotels and Resorts Pvt. Ltd. V/s. State of Maharashtra**, **2004 (135) S.T.C. 289** in support of the submission made.

3. Per contra, the learned counsel appearing for the respondent placed reliance on the Judgment of the Apex Court in the case of **State of Karnataka V/s. Azad Coach Builders Pvt. Ltd** reported in 2006 (145) 176 and pressed into service the test laid by the Apex Court in para 6 of the said Judgment in particular to contend that the transaction in question is covered by sub-section (1) of section 5 of the C.S.T. Act.

4. This matter was heard by us on previous two occasions. The respondent during the course of hearing were directed to produce documents for perusal of this Court; which, culminated in the transaction in question. Accordingly, the documents were circulated for our perusal. After having examined the terms and conditions of the various documents placed on record, we are satisfied that on the date of sale there was a commitment of the Government of India to the Government of Tanzania to gift trucks in question. In order to fulfill the said commitment, the goods came to be

exported. In our view, the transaction in question conforms to the tests laid down by the Apex Court in para (6) of Judgment in the case of Azad Coach Builders Pvt. Ltd. (cited supra).

5. So far as the Division Bench Judgment of this Court in the case of Narang Hotels and Resorts Pvt. Ltd. is concerned, the said Judgment in para (80) lays down test to determine as to whether the sale has occasioned the export. Having applied the said test to the transaction in question, we are satisfied that the submissions made by the learned counsel appearing for the respondent needs acceptance. So far as the decision in the case of Usha Martin Black Ltd. (cited supra) is concerned, in our view, it does no lay down test contrary to what has been laid down in the case of Narang Hotel and Resorts Pvt.Ltd. (supra). The Judgments cited by Revenue, in our view, do not advance the case of the Revenue.

6. In that view of the matter, no substantial question of law arises in this application. The same is, therefore, dismissed in limine with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)